

January 31, 2001

Honorable Norman K. Ferguson, Senate Chair
Honorable William R. Savage, House Chair
Joint Standing Committee on Utilities & Energy
115 State House Station
Augusta, ME 04333

Re: LD 157, An Act to Clarify Marketing Standards for Telephone Utilities and
Competitive Electricity Providers

Dear Senator Ferguson and Representative Savage:

The Commission will testify in support of LD 157, An Act to Clarify Marketing Standards for Telephone Utilities and Competitive Electricity Providers. The Commission will be present at the work session and will be pleased to work with the Committee as it considers this bill.

LD 157 focuses on so-called “anti-slamming” consumer protections. It corrects an inconsistency between Maine’s generic telemarketing law and Maine’s telephone telemarketing law. It corrects a similar inconsistency between Maine’s generic law and the Commission’s rule governing competitive electricity provider telemarketing. We believe that these inconsistencies are inadvertent. Clarifying these provisions is necessary to allow telephone and electricity providers to operate in Maine in a manner intended by the Legislature.

The laws and rules that contain inconsistencies are summarized below, and are listed in the order in which they were approved:

- *Title 32, M.R.S.A. § 4662*, which states that sale of any merchandise, made with a telephone call to a consumer, must be made through a written contract that bears the signature of the consumer. Effective 1969.
- *Title 35-A § M.R.S.A. § 7106*, which states that a telephone carrier of in-state service who initiates a change in a customer’s carrier must obtain written authorization, authorization received by phone from that customer’s telephone number, or 3rd party oral authorization. Effective 1998.
- *Chapter 305 of the Commission’s rules*, which states that a competitive electricity provider who initiates a change in a customer’s electricity provider must obtain written authorization or 3rd party oral authorization with surrounding safeguards. Effective 2/1999.

- *Chapter 296 of the Commission's rules*, which implements Title 35-A § 7106 and establishes safeguards surrounding 3rd party verification in the telephone industry. Effective 9/1999.
- *Title 32, M.R.S.A. § 4690-A(4)*, which states that a telemarketer with no permanent place of business in Maine must comply with the provisions of Title 32, Chapter 69, Subchapter V (described in the first bullet above). Effective 2000.

Most regulations governing in-state telephone carriers and competitive electricity providers are found in Title 35-A of Maine law and in rules developed by the Commission. The Commission's rules contain a wide variety of consumer protections and were developed after considering input from all interested parties through the rulemaking process set forth in Maine law. In addition, the Committee considered the opinions of persons affected by telephone telemarketing when it developed § 7106 of Title 35-A.

Consumer fraud by in-state telephone carriers and by electricity providers is far easier to detect and correct than is fraud by many other industries. Telephone carriers must be certified by the Commission before they may do business in Maine. Similarly, electricity providers must be licensed. We know the identities and locations of the carriers and providers. If slamming takes place, our rules contain procedures for penalties and consumer restitution. Most importantly, we can revoke a certificate or license. Most consumers are aware that they may call us if they have been slammed, and public education reminds them of this fact.

An ongoing concern by policy makers in Maine's electricity market has been the slow growth of options for residential customers. Electricity providers consistently express concern that requirements that add marketing expense will impede the development of this market. While the national residential market is too immature to determine whether requiring a written contract will pose a barrier to entry, we think it is a concern worthy of consideration.

During development of the law and rule for the telephone industry, carriers emphasized the importance of consistency with federal anti-slamming law. With this in mind, the 3rd party verification provisions of Maine law intentionally mirror the federal anti-slamming law governing interstate carriers.

In summary, the Commission believes that the provisions of Title 35-A and the Commission's rules adequately protect telephone and electricity customers, and make it easier for companies in those industries to operate in the residential market. We recommend that the Committee report out LD 157 as ought-to-pass. Should the Committee choose not to pass LD 157, we urge the Committee to clearly establish the telemarketing provisions that must be practiced in the telephone and electric industries. If you have any questions regarding this matter please contact me.

Sincerely,

Marjorie R. McLaughlin
Legislative Liaison